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January 6, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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JAN - 6 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation in CC Docket 96-98; CCB Pol 97-9; CC Docket 98-146

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206, the Building Owners and Managers Association International ("BOMA"), the Institute of Real Estate Management ("IREM"), the International Council of Shopping Centers ("ICSC"), the National Apartment Association ("NAA"), the National Association of Real Estate Investment Trusts ("NAREIT"), the National Multi Housing Council ("NMHC"), and the National Realty Committee ("NRC") (jointly, the "Real Estate Associations"), through undersigned counsel, submit this original and five copies of a letter disclosing an oral and written ex parte presentation in the above-captioned proceeding.

On January 5, 1999, the following representatives of the Real Estate Associations met with Larry Strickling, Chief of the Common Carrier Bureau, and with Jordan Goldstein and John Berresford of the Common Carrier Bureau:

Jim Arbury	NMHC and NAA;
Megan Booth	IREM;
Gerard Lavery Lederer	BOMA;
Roger Platt	NRC;
Dallas Sweezy	ICSC; and
Matthew C. Ames	Miller & Van Eaton, P.L.L.C.

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The meeting addressed the concerns of the Real Estate Associations regarding access to real property by providers of telecommunications and advanced telecommunications. The attached written ex parte presentation, which was given to the Commission staff members present, summarizes the matters that were discussed in the meeting.

Miller & Van Eaton, P.L.L.C.

Ms. Magalie Roman Salas

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January 6, 1999

JAN - 6 1999

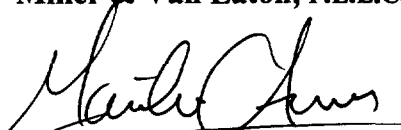
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FEDERAL COMMUNICATIONS COMMISSION
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Please contact the undersigned with any questions.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Matthew C. Ames

cc: Larry Strickling, Esq.
Jordan Goldstein, Esq.
John Berresford, Esq.

MCA00063

THE REAL ESTATE INDUSTRY URGES THE FCC TO REJECT ANY REGULATORY APPROACH TO SERVING THE "LAST 100 FEET"

The real estate market is highly competitive and responsive to customer demands, including demands for advanced telecommunications services. Panels on introducing high-speed Internet access into commercial and residential properties are in great demand at real estate industry conferences. Consequently, the Real Estate Coalition,¹ which represents the owners and managers of multi-tenant residential and commercial properties, believes that the market will find ways to provide service over the "last 100 feet."

The Coalition opposes Commission action for the following reasons:

- **Commission action would unnecessarily interfere with the existing free market.** The real estate industry is highly fragmented, dynamic and competitive. This means that no individual real estate owner has any significant degree of market power. The resulting competition forces building operators to respond to the needs of tenants and residents by accommodating requests for service. The attached *Washington Times* article is just one example of how the real estate industry is responding. Another is the recent agreement between WinStar Communications, Inc. and Spieker Properties, which gives WinStar access to over 600 office buildings in Los Angeles, the Bay Area, and Seattle. *Telecommunications Reports*, Dec. 21, 1998, p. 28.
- **There are sound policy reasons for preserving the control of building owners over their property.** For example, a property owner must have the right to enter into a contract with any person who has access to the building. This is the only way to manage the asset rationally and to protect the persons and property of all involved. If tenants and service providers can install facilities at will, the property owner cannot protect itself, tenants or third parties from potential injury -- and might face liability itself.
- **The Commission has no inherent authority to take private property, and Congress did not authorize it to do so.** Installation of wiring and other facilities is clearly and unavoidably a physical invasion of property, and therefore any regulation authorizing such installations without the owner's consent is a taking under the Fifth Amendment. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994). Congress has not directed the FCC to take the property of building owners, nor has it appropriated funds for that purpose.
- **The FCC has no authority over building owners as such.** *Illinois Citizens Committee for Broadcasting, et al. v. Sears, Roebuck & Co.*, 35 FCC 2d 237, *aff'd*, 467 F.2d 1397 (7th Cir. 1972) (FCC had no jurisdiction to address concerns raised by construction of Sears Tower).

¹ The Building Owners and Managers Association International, the Institute of Real Estate Management, the International Council of Shopping Centers, the National Apartment Association, the National Association of Real Estate Investment Trusts, the National Multi Housing Council, and the National Realty Committee.

New high-tech high-rise will set Rosslyn's profile soaring

Property lines

Mike Cleary

Arlington County has approved a D.C.-based developer's plan for a new office building in Rosslyn with high-tech trimmings to attract high-tech tenants.

The county hopes the 20-story building, its technology and its high profile will help redevelop aging Rosslyn into a hub for computer and telecommunications firms.

"We think this will bring the kind of attention and substantial help to companies that in and of itself repositions Rosslyn," said Adam Wasserman, director of the Arlington Department of Economic Development.

The Arlington County Board last week gave final approval to the JBG Companies' plan to tear down the existing nine-story building at 1801 N. Lynn St. and build a new, 285,000-square-foot office tower there.

Its height of 285 feet is no accident either, as it is intended to provide one of the best views of Washington and raise Rosslyn's profile, county officials said. The county has even set up a Web site, www.1801nlynn.com, to market the building.

The new building would be outfitted with an unprecedented level of technology designed to attract high-tech firms and to provide a communications center within Rosslyn for use by the public and businesses in the community, county officials said.

The building will be pre-wired with fiber-optic cable for high-speed communications, Internet access and a video-teleconfer-

encing center. These would save tenants thousands of dollars in outfitting costs, county officials said. Energy-efficient heating and ventilation systems will also save tenant costs, officials said.

"It's really a 'plug 'n play' building," said Mark Fairbrother of RTKL Associates, the project's architect.

The building serves as part of a broader plan to draw other high-tech firms to Rosslyn, alongside efforts to adopt new business regulations and help match tech companies with skilled workers.

"We want to use this building to set the standard to create that cluster of telecommunications and the high-technology companies," said Dave Link, chairman of the Arlington Economic Development Commission.

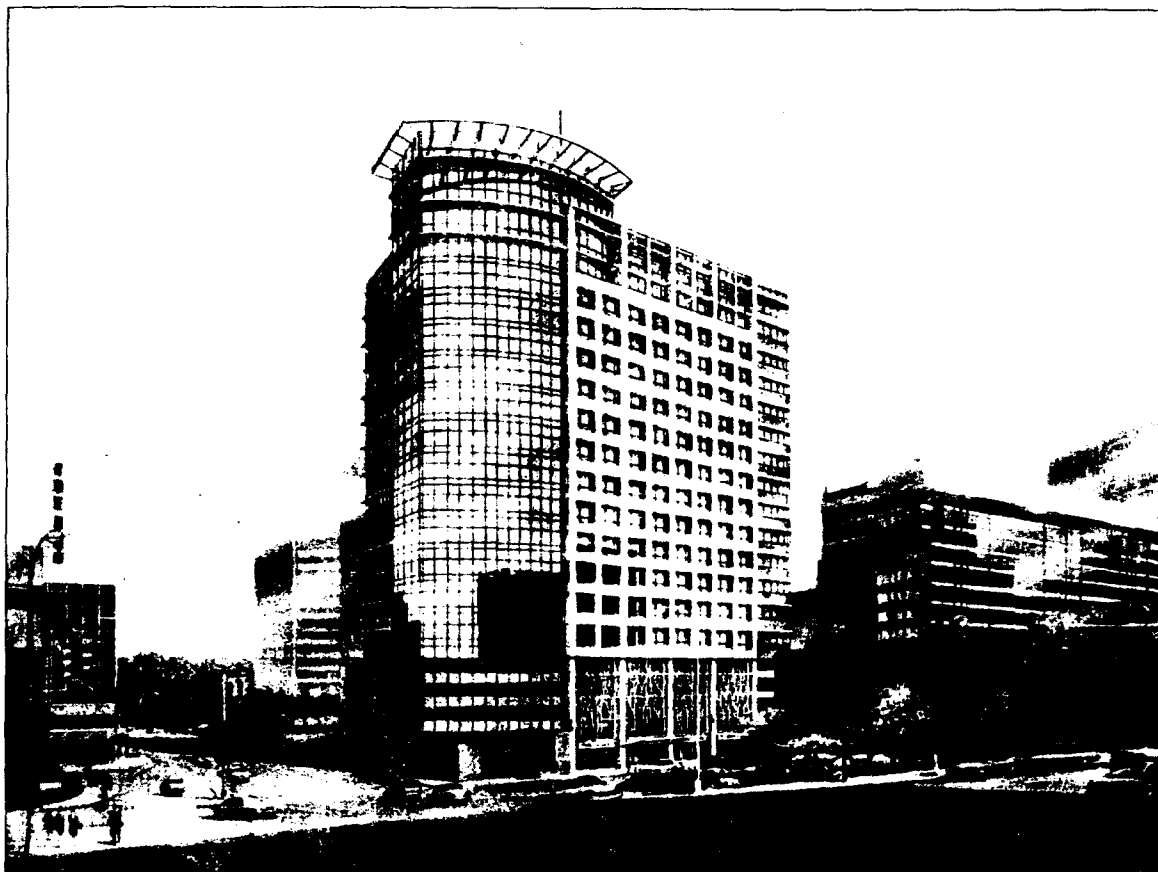
"It will help the next building move faster. Those kinds of things translate to real dollars," Mr. Wasserman said.

The county zoned the property generously in order to maximize its value, he said. The allowed density was almost tripled, which was what persuaded JBG to spend the extra \$2.7 million on the building's technology, Mr. Wasserman said.

It's also the first building to be granted the zoning to tear down the current structure and develop a completely new building, officials said.

No tenants have been lined up, but negotiations with "major users" are under way, said Ben Jacobs, a principal with JBG. Once the first major lease is signed, JBG would be able to schedule demolition to start the project. Construction should take two years, he said. JBG is still estimating costs and has yet to decide rents it would seek.

The Steuart Investment Companies of Chevy Chase are partners in the project with JBG.



A new 20-story, 285,000-square-foot office tower for high-tech businesses will be added to the Rosslyn skyline at 1801 N. Lynn St.